

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3335 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KRISHNAKANT DAHYABHAI PAREKH

Versus

STATE OF GUJARAT

Appearance:

MR PB MAJMUDAR for Petitioner

MR DA BAMBHANIA GOVT. SOLICITOR for Respondent
Nos.1 & 2.

MR RN SHAH for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/05/98

Oral judgment:

Rule. Mr. D.A. Bambhania, learned Government Solicitor waives service for respondents No.1 and 2 and Mr. R.N. Shah waives service on behalf of respondent No.3. At the request of the learned advocates for the parties, the matter is taken up for final hearing today.

The sole question which has surfaced in this petition for determination is as to whether reservation in a single promotional post is permissible under the law? In order to appreciate the aforesaid question, let us appreciate the undisputed facts of the case which are incapable of being disputed.

The petitioner herein is serving on the post of Principal in respondent No.3 school. Since 1973 he was serving as an Assistant Teacher in the primary school which was getting grant from the Social Defence Department of the State of Gujarat. The said school is meant for deaf and dumb children. In Gujarat State there are about 30 schools for deaf and dumb children.

Respondent No.3 had issued a public advertisement on 9.4.1995 by which applications were invited from candidates who desired to be appointed on the post of Principal in the school. It may be mentioned that the said advertisement was general in character and there was no mention that the post in question was to be filled up from candidates belonging to reserved category or on roster quota. The petitioner applied vide application dated 18.4.1995 for the said post. Pursuant to that he was also called for interview and ultimately he was selected and given appointment to the post of Principal in the pay scale of Rs.2000-3500 by order dated 5.6.1995 and since then the petitioner is working on the said post.

It is pertinent to note that a representative of respondent No.2, Director of Social Defence, Gujarat State, was also present in the selection committee which consisted of four members and the petitioner was selected by unanimous resolution passed by the said committee. Notwithstanding the petitioner was selected in the pay scale of Rs.2000-3500 he has not been paid salary in the said pay scale till date on the ground that the petitioner's appointment was not approved by the Director of Social Defence. It is say of the petitioner that he has been deprived of the pay scale to which he is entitled to and at present he is getting the pay scale of Rs.1400-2600 though he is working on the post of Principal.

It is further averred that the respondent No.2 had by letter dated 6.5.1997 informed the respondent No.3 school that as the respondent No.3 has only one post of principal, guidance was sought from the Government regarding applicability of roster to the said post and as per Government Resolution dated 22.4.1983 even in case of

isolated post cycle of roster would apply. In the circumstances, it was informed by respondent No.2 to respondent No.3 that the post of Principal was required to be filled up by applying roster point and hence the appointment of the petitioner is in contravention of the rules relating to operation of roster point. Ultimately it was directed that necessary action be taken for filling up the post in question by appointing a Scheduled Caste candidate.

It is the say of the petitioner that it is well settled position of law that in case of isolated or solitary post roster is not applicable. Not only that it was on the basis of public advertisement that the petitioner had applied for the post and he was duly selected and appointed on the post of Principal. In the advertisement there was no mention that applications were invited only from candidates belonging to reserved category. In fact, Department's own representative was also present at the time of selection and on that basis since June 1995 the petitioner is working on the post of Principal. Therefore, the aforesaid decision of the respondents No.1 and 2 is highly arbitrary, unjust and illegal. It is further case of the petitioner that so far as the guidance sought by respondent No.2 from Government is concerned, there was no question of seeking any guidance of the Government as to whether the isolated post of Principal would fall to the reserved category or not. The petitioner, therefore, filed Application No. 115 of 1997 before the Gujarat Primary Education Tribunal at Ahmedabad challenging the said action of respondents No.1 and 2. Initially in the said application, ad-interim relief in favour of the petitioner was granted. Ultimately, the Tribunal observed that after consultation with the Government necessary guidance was obtained in the matter and accordingly as per Government Resolution dated 22.4.1983 even in case of isolated post in a cadre, roster can be made applicable and, therefore, the post in question was required to be filled in by appointing a candidate belonging to Scheduled Caste. Therefore, by order dated 22.3.1998 the Tribunal vacated the ad-interim relief granted earlier. Hence, the petitioner is constrained to approach this Court by way of this petition under Articles 226 and 227 of the Constitution of India challenging the aforesaid order of the Tribunal.

It is further submitted by the petitioner that so far as the Tribunal is concerned, it had no jurisdiction to decide the issue in question. Therefore, the order dated 22.3.1998 passed by the Tribunal is illegal and arbitrary. Lastly, it is submitted that the petitioner

is working on the said post since June 1995 and he was appointed on the said post in the pay scale of RS.2000-3500 and thereafter his pay was fixed at Rs.2360 with effect from 6.6.1995 in the pay scale of Rs.2000-3500. Therefore, he is entitled to get salary in the said pay scale on the post of Principal and is also entitled to arrears of salary from June 1995 till date of filing of petition.

Learned advocate Mr. Majmudar appearing for the petitioner has placed reliance on the Full Bench decision of the Supreme Court in the case of Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association and others, JT 1998 (3) S.C. 223. In that case the Apex Court has observed as under:

"There is need for reservation for the members of the Schedule Castes and Scheduled Tribes and other backward classes and such reservation is not confined to the initial appointment in a cadre but also to the appointment in promotional post. It cannot however be lost sight of that in the anxiety for such reservation for the backward classes, a situation should not be brought by which the chance of appointment is completely taken away so far as the members of other segments of the society are concerned by making such single post cent per cent reserved for the reserved categories to the exclusion of other members of the community even when such member is senior in service and is otherwise more meritorious. Articles 14, 15, 16 including Article 16 (4), 16 (4A) must be applied in such a manner so that the balance is struck in the matter of appointments by creating reasonable opportunities for the reserved classes and also for the other members of the community who do not belong to reserved classes."

In the said case it is further observed by the Supreme Court as under:

"In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent percent reservation for the backward classes is not permissible within

the constitutional frame work. The decisions of this Court to this effect over the decades have been consistent. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise."

While pressing the aforesaid pronouncement of the Apex Court into service, Mr. Majmudar, learned advocate for the petitioner, contended that so far as the instant case is concerned it is also a case of one post of Principal. Therefore, the cycle of roster or reservation either directly or on promotional post is not permissible because it is violative of Articles 14, 15, 16 (4) and 16 (4A) of the Constitution. He further submitted that even in the public advertisement issued by respondent No.3 also there was no mention about the post to be filled in from the reserved quota or by applying the cycle of roster. It is further submitted that the letter dated 6.5.1997 written by the respondent No.2 to respondent No.3 is against the law laid down by the Apex Court and, therefore, lastly he contended that the petition deserves to be allowed by granting reliefs as prayed for in the petition.

Learned Government Solicitor Mr. Bambhania to whom I have heard has fairly conceded that in view of the judgment of the Apex Court the petition deserves to be allowed.

After having considered the pronouncement of the Apex Court, there is no alternative for this court except to allow the petition. The law laid down by the Apex Court is the law of the country under Article 141 of the Constitution of India. So far as the instant case is concerned, the petitioner has been appointed as Principal since 1995 in the pay scale of Rs.2000-3500. Even while issuing the advertisement inviting applications from suitable candidates the management of the school has not made it clear that they want to fill up the post from reserved quota or by applying roster cycle. Even if they have done so then also the aforesaid judgment of the Apex Court would come to the rescue of the petitioner. It is an admitted position that the post of Principal is a single post. As per the pronouncement of the Apex Court even at the time of fresh recruitment or at the time of filling up the single promotional post, there cannot be any reservation and the cycle of roster does not apply to isolated post.

In view of this situation and the law laid down by the Apex Court, this petition deserves to be allowed. Accordingly, this petition is allowed. The respondents

are hereby directed to regularize the service of the petitioner as Principal with effect from 5.6.1995 and also to pay the arrears of salary considering him in the pay scale Rs.2000-3500 within a period of six weeks hereof. Rule is made absolute. In the facts and circumstances, there shall be no order as to costs.